

**Letter of Findings: 02-20150182
Corporate Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Utility company was entitled to abatement of an underpayment penalty because the utility company filed its 2013 Indiana corporate tax return in the reasonable belief that its filing position was correct.

ISSUE

I. Corporate Income Tax - Underpayment Penalty.

Authority: IC § 6-3-4-4.1(b); IC § 6-3-4-4.1(c); IC § 6-3-4-4.1(d); IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer believes it is entitled to an abatement of an underpayment penalty and asks the Department to exercise its discretion to abate that penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state utility company in the business of producing, transmitting, distributing, trading, and selling utility services. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's 2008, 2009, and 2010 corporate tax returns. That audit resulted in adjustment of Taxpayer's returns and a consequent assessment of additional tax.

Taxpayer protested the results of the audit and assessment. That protest is addressed in a companion document, Letter of Findings 02-20140660 (May 22, 2015).

During the pendency of the audit, Taxpayer and its affiliates filed a 2013 consolidated income tax return and remitted payment along with that return.

The Department adjusted Taxpayer's 2013 return to comport with the audit's 2008, 2009, and 2010 conclusions. The adjustment resulted in an assessment of additional tax, interest, and the underpayment penalty. Taxpayer disagreed with the penalty assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Corporate Income Tax - Underpayment Penalty.

DISCUSSION

Taxpayer maintains that it is entitled abatement of the penalty on the ground that the original calculation and payment of its 2013 Indiana corporate tax liability was based on "reasonable cause" and that any underpayment was not due to negligence.

At the outset, it should be noted that this Letter of Findings does not address substantive issues underlying the assessment nor does it address the actual assessment of additional tax. As with any assessment, it is the Taxpayer's responsibility to establish that the penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

IC § 6-3-4-4.1(b) imposes on each taxpayer the responsibility to make and pay a "declaration of estimated tax for the taxable years" if the amount of that estimated tax is more than \$1,000. Additionally, IC § 6-3-4-4.1(c) states in relevant part:

Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

IC § 6-3-4-4.1(d) imposes a penalty if a taxpayer fails to pay the correct amount of estimated tax.

The penalty prescribed by [IC 6-8.1-10-2.1\(b\)](#) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty be imposed if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case by case basis according to the facts and circumstances of each taxpayer." *Id.*

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Taxpayer argues that it exercised ordinary care and prudence when it included in its consolidated return certain subsidiaries which it believed "had nexus and Indiana apportionment" factors. Moreover, Taxpayer states that - in filing its 2013 return - it "followed Indiana law, the tax return instructions, and other guidance in applying the standard statutory method of income apportionment by starting with federal taxable income as adjusted."

Based on a "case by case" review of the "facts and circumstances" surrounding the filing of Taxpayer's 2013 return, the Department agrees that the penalty should be abated. Whatever substantive differences the Department may have with Taxpayer's filing position, there is no evidence that Taxpayer was careless, thoughtless, or inattentive of its filing responsibilities.

FINDING

Taxpayer's protest is sustained.

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